

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

MARY E. LENTZ	:	Case No.: 01-CV-599
	:	
Plaintiff,	:	Judge Watson
	:	
v.	:	DEFENDANT CINCINNATI INSURANCE
	:	COMPANY AND DAVID BALZANO’S
	:	PROPOSED SPECIAL VERDICT FORMS
	:	CONTAINING SPECIFIC
	:	INTERROGATORIES
CINCINNATI INSURANCE	:	
COMPANY	:	
	:	
and	:	
	:	
DAVID BALZANO	:	
	:	
Defendants.	:	

Pursuant to Rule 49(b) of the Federal Rules of Civil Procedure, Defendants Cincinnati Insurance Company (“CIC”) and David Balzano (“Balzano”) (collectively “Defendants”) submit the following three separate proposed verdict forms containing Special Interrogatories And Jury Verdict Form Related To: (1) Mary Lentz’s Title VII Gender Discrimination Claim Against Cincinnati Insurance Company; (2) Mary Lentz’s Claims Against David Balzano; (3) Counterclaim Of Cincinnati Insurance Company Against Mary Lentz. Defendants respectfully request that the Court provide these to the jury and require that they be completed by the jury during its deliberation. Defendant reserves the right to modify, delete, or supplement the proposed special verdict forms based upon this Court’s rulings on issues raised in Trial Briefs or motions *in limine* or based upon the evidence at trial.

Because of the complexity of the issues before the jury, with separate claims being addressed to separate defendants and a counterclaim addressed to Plaintiff, Defendants believe

that it is necessary that the jury be clearly asked to express their decision as to each element of each claim against the appropriate party. Defendants believe that this process will ensure clarity in the jury's decision-making process, so that it will be clear at the end of that process how the jury arrived at whatever decision it arrived at. The uses and benefits of special interrogatories have been described by the United States Court of Appeals for the Sixth Circuit as follows:

Rule 49(b), on the other hand, allows the court to submit to the jury the appropriate forms for a general verdict, in addition to written interrogatories on one or more issues of fact. *Id.* § 2511, at 521; Fed.R.Civ.P. 49(b). The general verdict with interrogatories may be viewed as a middle ground between the special verdict and the general verdict, although it does have some unique virtues. The general verdict with interrogatories affects the *weight* given to certain factors; it requires the jury "to give close attention to the *more important* issues and their answers serve to check the propriety of the general verdict." *Id.* (emphasis added). n11 It is in the court's discretion whether to submit written interrogatories in connection with a general verdict. *Id.* § 2512, at 523. The court has a similar discretion in deciding not only what issues to submit, if it chooses to use Rule 49(b), but also in choosing the form in which these issues are submitted. *Id.* This decision should be made before the case is submitted to the jury and as with the special verdicts, counsel should: first, be notified that Rule 49(b) will be used; and second, be provided with an opportunity to review the interrogatories. In addition, judicial economy is advanced through the use of written interrogatories. Because the jury's analysis is identified in their responses to the written questions, the potential for a new trial is diminished.

Portage II v. Bryant Petroleum Corp., 899 F.2d 1514, 1520 (6th Cir. 1990).

If the Court finds one sentence or paragraph in these special verdict forms improper, Defendant asks that the Court provide the Defendants with an opportunity to revise the form accordingly.

Respectfully submitted,

/s/ Deborah S. Adams
Deborah S. Adams (0005607)
Jack B. Harrison (0061993)
FROST BROWN TODD LLC
2200 PNC Center
201 E. Fifth Street
Cincinnati, Ohio 45202-4182
Telephone: (513) 651-6800
Telecopier: (513) 651-6981
dadams@fbtlaw.com
jharrison@fbtlaw.com

Trial Attorneys For Defendants

CERTIFICATE OF SERVICE

I hereby certify that on May 18, 2005, a copy of the foregoing, Defendants' Proposed Special Interrogatories and Verdict Forms, were filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system and copies will be mailed via U.S. Mail to those parties who are not served via the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Deborah S. Adams

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

MARY E. LENTZ	:	Case No.: 01-CV-599
	:	
Plaintiff,	:	Judge Watson
	:	
	:	
v.	:	SPECIAL INTERROGATORIES AND
	:	JURY VERDICT FORM RELATED TO
CINCINNATI INSURANCE	:	MARY LENTZ’S TITLE VII GENDER
COMPANY, et al.	:	DISCRIMINATION CLAIM AGAINST
	:	CINCINNATI INSURANCE COMPANY
Defendants.	:	

GENDER DISCRIMINATION CLAIM
AGAINST CINCINNATI INSURANCE COMPANY

INTERROGATORY NO. 1(a).

Has Ms. Lentz proven by a preponderance of the evidence that Cincinnati Insurance Company’s explanation for her discharge was not the real reason?

(Your answer must be unanimous. If you determine the evidence is equally balanced, you must answer “No.”)

Yes _____

No _____

Foreperson

If you answered “No” to Interrogatory No. 1(a) and you have also completed the Interrogatories related to Mary Lentz’s claims against David Balzano and CIC’s claim against Mary Lentz, your deliberations are now over and you should return to the Courtroom with the Special Interrogatories and Verdict Form (pages _____).

If you answered “Yes” to Interrogatory No. 1(a), please proceed to Interrogatory No. 1(b).

INTERROGATORY NO. 1(b).

Has Ms. Lentz proven by a preponderance of the evidence that Cincinnati Insurance Company's real and intentional reason for discharging her was because she is female?

(Your answer must be unanimous. If you determine the evidence is equally balanced, you must answer "No." If you find that Cincinnati Insurance Company had an honest belief in its stated reason for discharging Ms. Lentz, you must answer "No.")

Yes _____

No _____

Foreperson

If you answered "No" to Interrogatory No. 1(b) and you have also completed the Interrogatories related to Mary Lentz's claims against David Balzano and CIC's claim against Mary Lentz, your deliberations are now over and you should return to the Courtroom with the Special Interrogatories and Verdict Form (pages _____).

If you answered "Yes" to Interrogatory No. 1(b), please proceed to Interrogatory No. 2.

INTERROGATORY NO. 2.

Has Ms. Lentz proven that she has suffered actual damages from lost wages as a result of gender discrimination that can be calculated with reasonable certainty and without guesswork or speculation?

(Your answer must be unanimous. If you determine the evidence is equally balanced, you must answer “No.”)

Yes _____

No _____

Foreperson

If you answered “No” to Interrogatory No. 2, please proceed to Interrogatory No. 4.

If you answered “Yes” to Interrogatory No. 2, please proceed to Interrogatory No. 3(a).

INTERROGATORY NO. 3(a).

Do you unanimously find that Ms. Lentz exercised reasonable diligence to secure or maintain a substantially equivalent job following her discharge from Cincinnati Insurance Company?

Yes _____

No _____

Foreperson

If you answered “No” to Interrogatory No. 3(a), please proceed to Interrogatory No. 3(b).

If you answered “Yes” to Interrogatory No. 3(a), please skip Interrogatory No. 3(b) and proceed to Interrogatory No. 3(c).

INTERROGATORY NO. 3(b).

Please indicate on the line provided the total amount (wages, benefits, earnings) if any, that you unanimously find Ms. Lentz could have earned through reasonable diligence.

\$ _____

Foreperson

Please proceed to Interrogatory No. 3(c).

INTERROGATORY NO. 3(c).

Please indicate on the lines provided the sum, if any, that you unanimously find will fairly compensate Ms. Lentz for loss of wages and income from the time of her discharge until December 31, 2001. From this amount, in order to determine the Total Lost Wages Awarded, you must subtract the total amount (1) that Ms. Lentz has earned from other employers during this same time period, including wages, earnings or other benefits; and (2) the total amount you find she could have earned through the exercise of reasonable diligence to secure or maintain a substantially equivalent job during the same time period.

Loss of wages from date of discharge until December 31, 2001 \$_____

MINUS

Wages, Earnings and Benefits Earned by
Ms. Lentz during same time period. (\$_____)

MINUS

Amount Ms. Lentz could have earned through due diligence (\$_____)

TOTAL LOST WAGES AWARDED \$_____

Foreperson

Please proceed to Interrogatory No. 4.

INTERROGATORY NO. 4.

Has Ms. Lentz proven by a preponderance of the evidence that she has suffered actual compensatory damages from any mental anguish and humiliation resulting from gender discrimination in termination that can be calculated with reasonable certainty and without guesswork or speculation?

(Your answer must be unanimous. If you determine the evidence is equally balanced, you must answer “No.”)

Yes _____

No _____

Foreperson

If you answered “No” to Interrogatory No. 4 and “No” to Interrogatory No. 2, and you have also completed the Interrogatories related to Mary Lentz’s claims against David Balzano and CIC’s claim against Mary Lentz, your deliberations are now over and you should return to the Courtroom with the Special Interrogatories and Verdict Form (pages _____).

If you answered “No” to Interrogatory No. 4 and “Yes” to Interrogatory No. 2 and entered a monetary amount in response to Interrogatory No. 3(c), then please proceed to Interrogatory No. 6(a).

If you answered “Yes” to Interrogatory No. 4, please proceed to Interrogatory No. 5.

INTERROGATORY NO. 5

Please indicate on the line provided the amount of compensatory damages, if any, that you have unanimously determined will fairly compensate Ms. Lentz for any mental anguish and humiliation that Ms. Lentz has proven she suffered as a direct result of gender discrimination in termination.

\$ _____

Foreperson

Please proceed to Interrogatory No. 6(a).

INTERROGATORY NO. 6(a).

Has Ms. Lentz proven by a preponderance of the evidence that Cincinnati Insurance Company acted with malice or with reckless indifference to her federal rights?

(Your answer must be unanimous. Unless Ms. Lentz proved conscious wrongdoing on the part of Cincinnati Insurance Company, you must answer “No.” If you determine the evidence is equally balanced, you must answer “No.”)

Yes _____

No _____

Foreperson

If you answered “Yes” to Interrogatory No. 6(a), please proceed to Interrogatory No. 6(b).

If you answered “No” to Interrogatory No. 6(a), and you have also completed the Interrogatories related to Mary Lentz’s claims against David Balzano and CIC’s claim against Mary Lentz, your deliberations are now over and you should return to the Courtroom with the Special Interrogatories and Verdict Form (pages _____).

INTERROGATORY NO. 6(b).

Has Cincinnati Insurance Company demonstrated that it engaged in good faith efforts to comply with anti-discrimination law by implementing and enforcing a written anti-discrimination policy in its workplace?

Yes _____

No _____

Foreperson

If you answered “Yes” to Interrogatory No. 6(b) and you have also completed the Interrogatories related to Mary Lentz’s claims against David Balzano and CIC’s claim against Mary Lentz, your deliberations are now over and you should return to the Courtroom with the Special Interrogatories and Verdict Form (pages _____).

If you answered “No” to Interrogatory No. 6(b), please proceed to Interrogatory No. 7.

INTERROGATORY NO. 7.

Answer this Interrogatory No. 7 only if:
(1) you answered “Yes” to Interrogatory No. 6(a) and “No” to Interrogatory 6(b).

Please indicate on the line provided the amount, if any, that you have unanimously determined to award in punitive damages for your finding of gender discrimination in termination.

\$_____

Foreperson

If you have also completed the Interrogatories related to Mary Lentz’s claims against David Balzano and CIC’s claim against Mary Lentz, your deliberations are now over and you should return to the Courtroom with the Special Interrogatories and Verdict Form (pages _____).

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

MARY E. LENTZ	:	Case No.: 01-CV-599
	:	
Plaintiff,	:	Judge Watson
	:	
v.	:	SPECIAL INTERROGATORIES AND
	:	JURY VERDICT FORM RELATED TO
CINCINNATI INSURANCE	:	MARY LENTZ’S CLAIMS AGAINST
COMPANY	:	DAVID BALZANO
	:	
and	:	
	:	
DAVID BALZANO	:	
	:	
Defendants.	:	

I. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS CLAIM

INTERROGATORY NO. 1(a).

Has Ms. Lentz proven by a preponderance of the evidence that David Balzano either intended or should have anticipated that making his report to Mr. Huller would cause Ms. Lentz to suffer serious emotional distress?

(Your answer must be unanimous. If you determine that the evidence is equally balanced, you must answer “No.”)

Yes _____

No _____

Foreperson

<p>If you answered “No” to Interrogatory No. 1(a), please proceed to Interrogatory No. 6.</p> <p>If you answered “Yes” to Interrogatory No. 1(a), please proceed to Interrogatory No. 1(b).</p>

INTERROGATORY NO. 1(b).

Has Ms. Lentz proven by a preponderance of the evidence that David Balzano engaged in conduct so outrageous in character and extreme in degree that it went outside society’s bounds of decency and should be regarded as atrocious and utterly intolerable?

(Your answer must be unanimous. If you determine that the evidence is equally balanced, you must answer “No.”)

Yes _____

No _____

Foreperson

<p>If you answered “No” to Interrogatory No. 1(b), please proceed to Interrogatory No. 6.</p> <p>If you answered “Yes” to Interrogatory No. 1(b), please proceed to Interrogatory No. 1(c).</p>

INTERROGATORY NO. 1(c).

Please describe on the lines below the conduct by David Balzano that you have determined was outrageous in character and extreme in degree such that it went outside society’s bounds of decency and should be regarded as atrocious and utterly intolerable.

Please proceed to Interrogatory No. 1(d).

INTERROGATORY NO. 1(d).

Has Ms. Lentz proven by a preponderance of the evidence that David Balzano’s conduct, and not some other independent cause or circumstance, was the direct cause of the emotional injury that Ms. Lentz alleges she suffered in this case?

(Your answer must be unanimous. If you determine that the evidence is equally balanced, you must answer “No.”)

Yes _____

No _____

Foreperson

If you answered “No” to Interrogatory No. 1(d), please proceed to Interrogatory No. 6.

If you answered “Yes” to Interrogatory No. 1(d), please proceed to Interrogatory No. 1(e).

INTERROGATORY NO. 1(e).

Has Ms. Lentz proven by a preponderance of the evidence that the resulting emotional distress she suffered was so severe and debilitating that a reasonable person could not endure it?

(Your answer must be unanimous. If you determine that the evidence is equally balanced, you must answer “No.”)

Yes _____

No _____

Foreperson

If you answered “No” to Interrogatory No. 1(e), please proceed to Interrogatory No. 6.

If you answered “Yes” to Interrogatory No. 1(e), please proceed to Interrogatory No. 2.

INTERROGATORY NO. 2.

Has Ms. Lentz proven that she suffered actual damages as a result of intentional infliction of emotional distress directly caused by Mr. Balzano that can be calculated with reasonable certainty and without conjecture or speculation?

(Your answer must be unanimous. If you determine that the evidence is equally balanced, you must answer “No.”)

Yes _____

No _____

Foreperson

If you answered “No” to Interrogatory No. 2, please proceed to Interrogatory No. 6.
If you answered “Yes” to Interrogatory No. 2, please proceed to Interrogatory No. 3.

INTERROGATORY NO. 3.

Please indicate on the line provided the amount of compensatory damages, if any, that you have determined will fairly compensate Ms. Lentz for the injury that she has proven she has suffered as a direct result of the conduct that you have found constituted intentional infliction of emotional distress.

\$ _____

Foreperson

If you awarded damages (a monetary sum) in response to Interrogatory No. 3, please proceed to Interrogatory No. 4.

If you did not award damages in response to Interrogatory No. 3, please proceed to Interrogatory No. 6.

INTERROGATORY NO. 4.

Has Ms. Lentz proven by “clear and convincing evidence” that David Balzano acted with “actual malice”?

(Your answer must be unanimous. Unless Ms. Lentz proved that it is highly probable that David Balzano acted with “actual malice,” you must answer “No.”)

Yes _____

No _____

Foreperson

If you answered “Yes” to Interrogatory No. 4, please proceed to Interrogatory No. 5.

If you answered “No” to Interrogatory No. 4, please proceed to Interrogatory No. 6.

INTERROGATORY NO. 5.

Please indicate on the line provided the amount, if any, that you have determined to award in punitive damages for the conduct of David Balzano that you have found constituted intentional infliction of emotional distress. (Your decision must be unanimous.)

\$_____

Foreperson

Please proceed to Interrogatory No. 6.

II. TORTIOUS INTERFERENCE WITH BUSINESS RELATIONSHIP

INTERROGATORY NO. 6

Has Ms. Lentz proven by a preponderance of the evidence that Mr. Balzano, through his conduct, purposely interfered with her employment relationship with Cincinnati Insurance Company?

(Your answer must be unanimous. If you determine that the evidence is equally balanced, you must answer “No.”)

Yes _____

No _____

Foreperson

If you answered “No” to Interrogatory No. 6 and you have also completed all Interrogatories related to Mary Lentz’s claim against Cincinnati Insurance Company and CIC’s claim against Mary Lentz, your deliberations are now over and you should return to the Courtroom with the Special Interrogatories and Verdict Form (pages _____).

If you answered “Yes” to Interrogatory No. 6, please proceed to Interrogatory No. 7.

INTERROGATORY NO. 7:

Has Ms. Lentz proven that David Balzano was acting within his personal capacity, rather than his professional capacity as her supervisor, when he took actions alleged to have interfered with Ms. Lentz’s employment relationship with Cincinnati Insurance Company?

(Your answer must be unanimous. If you determine that the evidence is equally balanced, you must answer “No.”)

Yes _____

No _____

Foreperson

If you answered “No” to Interrogatory No. 7, and you have also completed all Interrogatories related to Mary Lentz’s claim against Cincinnati Insurance Company and CIC’s claim against Mary Lentz, your deliberations are now over and you should return to the Courtroom with the Special Interrogatories and Verdict Form (pages _____).

If you answered “Yes” to Interrogatory No. 7, please proceed to Interrogatory No. 8.

INTERROGATORY NO. 8.

Has Ms. Lentz proven that she suffered actual damages as a result of tortious interference with her employment relationship with Cincinnati Insurance Company that can be calculated with reasonable certainty and without conjecture or speculation?

(Your answer must be unanimous. If you determine that the evidence is equally balanced, you must answer “No.”)

Yes _____

No _____

Foreperson

If you answered “No” to Interrogatory No. 8, and you have also completed all Interrogatories related to Mary Lentz’s claim against Cincinnati Insurance Company and CIC’s claim against Mary Lentz, your deliberations are now over and you should return to the Courtroom with the Special Interrogatories and Verdict Form (pages _____).

If you answered “Yes” to Interrogatory No. 8, please proceed to Interrogatory No. 9.

INTERROGATORY NO. 9.

Please indicate on the line provided the amount of compensatory damages, if any, that you have determined will fairly compensate Ms. Lentz for the injury that she has proven she has suffered as a direct result of the conduct that you have found constituted tortious interference of a business relationship.

\$ _____

Foreperson

If you awarded damages (a monetary sum) in response to Interrogatory No. 9, please proceed to Interrogatory No. 10.

If you did not award damages in response to Interrogatory No. 9, and you have completed all Interrogatories related to Mary Lentz’s claim against Cincinnati Insurance Company and CIC’s claim against Mary Lentz, your deliberations are now over and you should return to the Courtroom with the Special Interrogatories and Verdict Form (pages _____).

INTERROGATORY NO. 10.

Has Ms. Lentz proven by “clear and convincing evidence” that David Balzano acted with “actual malice” in interfering with her employment relationship with Cincinnati Insurance Company?

(Your answer must be unanimous. Unless Ms. Lentz proved that it is highly probable that David Balzano acted with “actual malice,” you must answer “No.”)

Yes _____

No _____

Foreperson

If you answered “Yes” to Interrogatory No. 10, please proceed to Interrogatory No. 11.

If you answered “No” to Interrogatory No. 10 and you have completed all Interrogatories related to Mary Lentz’s claim against Cincinnati Insurance Company and CIC’s claim against Mary Lentz, your deliberations are now over and you should return to the Courtroom with the Special Interrogatories and Verdict Form (pages _____).

INTERROGATORY NO. 11.

Please indicate on the line provided the amount, if any, that you have determined to award in punitive damages for the conduct of David Balzano that you have found constituted tortious interference with Ms. Lentz’s employment relationship with Cincinnati Insurance Company. (Your decision must be unanimous.)

\$ _____

Foreperson

If you have also completed all Interrogatories related to Mary Lentz’s claim against Cincinnati Insurance Company and CIC’s claim against Mary Lentz, your deliberations are now over and you should return to the Courtroom with the Special Interrogatories and Verdict Form (pages _____).

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

MARY E. LENTZ	:	Case No.: 01-CV-599
	:	
Plaintiff,	:	Judge Watson
	:	
v.	:	SPECIAL INTERROGATORIES AND
	:	JURY VERDICT FORM RELATED TO
CINCINNATI INSURANCE	:	COUNTERCLAIM OF CINCINNATI
COMPANY	:	INSURANCE COMPANY AGAINST MARY
	:	LENTZ
and	:	
	:	
DAVID BALZANO	:	
	:	
Defendants.	:	

UNLAWFUL CONVERSION OF CIC FUNDS BY MARY LENTZ

INTERROGATORY NO. 1(a).

Has Cincinnati Insurance Company proven by a preponderance of the evidence (1) that funds received by Ms. Lentz were the property of Cincinnati Insurance Company, which Cincinnati Insurance Company had an immediate right to possess and (2) that Ms. Lentz deprived Cincinnati Insurance Company of its right to these funds by placing them in her personal bank account or by retaining them?

(Your answer must be unanimous.)

Yes _____

No _____

Foreperson

If you answered “Yes” to Interrogatory No. 1(a), please proceed to Interrogatory No. 1(b).

If you answered “No” to Interrogatory No. 1(a), and you have also completed the Interrogatories related to Mary Lentz’s claims against David Balzano and Cincinnati Insurance Company, your deliberations are now over and you should return to the Courtroom with the Special Interrogatories and Verdict Form (pages _____).

INTERROGATORY NO. 1(b).

Please indicate on the line provided the amount of compensatory damages, if any, that you have determined will fairly compensate Cincinnati Insurance Company for the injury that it has proven it has suffered as a direct result of the conduct that you have found constituted unlawful conversion of funds.

\$ _____

Foreperson

Please proceed to Interrogatory No. 2.

INTERROGATORY NO. 2.

Has Cincinnati Insurance Company proven by “clear and convincing evidence” that Mary Lentz acted with fraud or “actual malice” in unlawfully converting funds belonging to Cincinnati Insurance Company?

(Your answer must be unanimous. Unless Cincinnati Insurance Company proved that it is highly probable that Mary Lentz acted with fraud or “actual malice,” you must answer “No.”)

Yes _____

No _____

Foreperson

If you answered “Yes” to Interrogatory No. 2, please proceed to Interrogatory No. 3.

If you answered “No” to Interrogatory No. 2 and you have also completed the Interrogatories related to Mary Lentz’s claims against David Balzano and Cincinnati Insurance Company, your deliberations are now over and you should return to the Courtroom with the Special Interrogatories and Verdict Form (pages _____).

INTERROGATORY NO. 3.

Please indicate on the line provided the amount, if any, that you have determined to award in punitive damages for the conduct of Mary Lentz that you have found constituted unlawful conversion of funds from Cincinnati Insurance Company. (Your decision must be unanimous.)

\$ _____

Foreperson

If you have also completed the Interrogatories related to Mary Lentz’s claims against David Balzano and Cincinnati Insurance Company, your deliberations are now over and you should return to the Courtroom with the Special Interrogatories and Verdict Form (pages _____).